IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 151 OF 2006

Shri K. Abdullah, Panaji,
Goa. ... Applicant

versus

Shri Damodar S. Prabhu,
St. Cruz, Goa. ... Respondent

Mr. S. G. Bhobe, Advocate for the Applicant.

CORAM : N. A. BRITTO, J.

DATE : 16TH MARCH, 2006.

P.C.:-

Heard Mr. S. G. Bhobe, the learned Counsel appearing on behalf of the applicant/complainant in Criminal Case No.OA/426/02/A/D. The complainant prosecuted the accused under Section 138 of the Negotiable Instruments Act, 1881 and the learned Judicial Magistrate, First Class, Panaji, by his Judgment/Order dated 1-12-2005 has acquitted the accused. In acquitting the accused, the learned J.M.F.C., Panaji, has come to the conclusion that the complainant was a money lender as defined under Section 2(1) of the Goa Money Lenders Act, 2001

and in the absence of having obtained a licence as required under the Goa Money Lenders Act, 2001 the accused could not be prosecuted. The learned J.M.F.C. has also come to the conclusion that in the absence of a licence a suit for recovery of the amount would not be maintainable and as such there was no existing debt or liability which the complainant could have recovered from the said accused. The learned J.M.F.C. had placed reliance on the case of **Krishnam Raju Finances, Hyderabad** v. **Abida Sultana and another**(2004, Vol.(2) Dishonour of Cheque Reporter page 1). In coming to the conclusion that the complainant was a money lender, the learned trial Court has considered the admissions obtained by the accused in the evidence of the complainant. The complainant in the course of his evidence had admitted that he had advanced money to many other persons by charging interest and the rate of interest charged by him depended upon the quantum of money to be advanced. The complainant had also stated that the higher the amount of the loan, the lesser would be the rate of interest to be charged by him. Mr. Bhobe, the learned Counsel on behalf of the complainant submits that the accused had led no evidence to prove that the profession of the complainant was of money

lending. In my view, the said submission cannot be accepted, in the light of the facts stated by the complainant in this case. It is more than obvious that the complainant was lending money and has rightly held to be a money lender by the learned trial Court. On facts proved, it cannot be said that the view taken by the learned J.M.F.C. is not a plausible view. In my view, this is not a fit case to grant leave to appeal. Application is dismissed in limine.

N. A. BRITTO, J.

RD